LEBBEY SDN BHD

v.

CHONG WOOI LEONG & ANOR

HIGH COURT MALAYA, SHAH ALAM
ABDUL WAHAB PATAIL J
[CIVIL SUIT NOS: CS 22-264-94; CS 22-50-94 & SP 24-69-94]
3 JULY 1997

LAND LAW: *Adverse possession - Defence of equitable estoppel - Whether equity applies - Whether adverse possession can become a bar to the recovery of possession by any proprietor*

WORDS AND PHRASES: *"State Authority" - National Land Code 1965, s. 5*

The plaintiff was the registered proprietor of the land which had been alienated to it on 14 June 1993 by the Selangor State Authority. At the time of the alienation, there were squatters on the land, some of whom refused to vacate the land. The plaintiff therefore commenced an action against those occupiers ('the defendants').

The defendants argued on the basis that: (a) they had acquired the right in equity to be compensated; and (b) that the plaintiff, taking the land with the full knowledge of the defendants occupying the land, had therefore become subject to that right. The defendants also argued that an equitable estoppel arose on the basis that during the election, politicians had visited them and promised that they would be given temporary occupation licences. Moreover the defendants had peaceful enjoyment and occupation of the land without interference by the state authorities and that the district officer allowed the defendants to re-build their houses after a fire in 1991.

Held:

[1] The registered owner of any land is *prima facie* entitled to possession of it, and any person claiming a right of occupation against such registered owner bears the burden of proving such right on a balance of probabilities.

[2] "State Authority" under the National Land Code 1965 ('NLC 1965') is defined (for the purposes of Selangor) as the Ruler. This means the Ruler acting upon the recommendation of the Exco of the State. In this case the district officer who allowed certain fire victims to re-build their houses was only a district officer who was unknown to the NLC 1965.

[3] Furthermore a person seeking remedy in equity must come with clean hands. In this case, the defendants were in breach of the NLC 1965 as according to s. 48, no title to State shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. Adverse possession therefore cannot become a bar to the recovery of possession by any proprietor or any person having an interest therein.

[4] There was no evidence of any promise by the State Authority or by the plaintiff. The failure to prosecute the defendants under s. 425 of the NLC 1965 was not by itself a promise. That is because acquiescence based on the argument of non-action without more, cannot be a promise.

[Application allowed.]

Cases referred to:
Lee Suat Hong v. Teo Lye [1988] 2 MLJ 537 CA ***(not foll)***
Teh Bee v. Maruthamuthu [1977] 2 MLJ 712 ***(foll)***
Walton Stores Ltd v. Maher & Anor [1987-1988] 164 CLR 387 HCA ***(refd)***
Yap Chong Lan v. Govt of the State of Negeri Sembilan & Anor [1984] 2 MLJ 123 FC ***(foll)***

Legislation referred to:
National Land Code 1965, ss. 48, 78(3), 341, 425

For the plaintiff - Viswanathan; M/s TH Su & Co
For the defendants - R Kesavan (N Santhiago with him); M/s ML Lum & Co, M/s Mahani Hamid & Yasmeen

Reported by Mariette Peters-Goh

JUDGMENT

Abdul Wahab Patail J:

The plaintiff is the Registered Proprietor of 31.66 acres of land comprised in HS(D) 34221 PT. No. 30186 Mukim of Ampang, District of Ulu Langat, Negeri Selangor (hereinafter referred to as the said land). The said land was previously owned by the Selangor State Authority.

On 26 August 1992, the Majlis Mesyuarat Kerajaan approved the plaintiff's application for alienation of the said land subject to the conditions set out in a letter dated 8 October 1992 by the Pejabat Daerah Tanah Ulu Langat. The area to be alienated to the plaintiff was precisely defined when the Pejabat Daerah/Tanah Ulu Langat issued a supplementary letter dated 15 January 1993 with a Survey plan. Qualified Title to the said land was issued to the plaintiff on 14 June 1993.

At the time of the alienation, there were many houses built on the said land and many people were occupying these houses. The plaintiff negotiated with these occupiers on an *ex-gratia* basis to enable the plaintiff to develop the said land to a mixed residential, industrial and commercial estate as soon as possible. The plaintiff offered three schemes of settlement to the occupiers on the said land.

Most squatter families have accepted the plaintiff's offer and have vacated their respective units. The plaintiff demanded the remaining occupiers to vacate the said land and the last demand was made by a notice to quit dated 17 January 1994.

As the remaining occupiers refused to vacate the said land, the plaintiff commenced Civil Suit No 22-50-94 against those defendants whose names were known to the plaintiff. In addition to Civil Suit No. 22-50-94, legal action was also commenced by the plaintiff by way of an Originating Summons No. 24-69-94 against those occupiers on the said land whose names were not known to the plaintiff. A total of 24 persons defended the plaintiff's Originating Summons and a further 11 persons indicated their intention to be joined as defendants.

The registered owner of any land is *prima facie* entitled to possession of it, and any person claiming a right of occupation against such registered owner, such as in the case of the defendants, bears the burden of proving such right on a balance of probabilities.

The argument put up on behalf of the defendants is in two stages. Firstly, that the defendants have acquired a right in equity to be compensated; and secondly, that the plaintiff, taking the land with full knowledge of the defendants occupying the said land, therefore becomes subject to that right. In other words the plaintiff takes the land subject to the defendants' equity.

It was submitted that the state authorities, knowing full well there were people in occupation on the said land, took the easy way out by passing on to the plaintiff its obligations in respect of the defendants' equity.

It was submitted that although the defendants had entered upon the land in 1981 without the consent or license, and the land was State Land, the defendants had peaceful enjoyment and occupation of the said land without interference of the state authorities. In fact, many of the defendants in occupation of the said land had access to piped water, electricity and even a surau. Indeed, after a fire in 1991, the district officer allowed the affected defendants to re-build their houses. At election time politicians came and promised that they would be given temporary occupation licence. As a result,

in 1991 a committee of residents had applied for a temporary occupation licence. Therefore, it is argued, an equitable estoppel arose; and the plaintiff, who succeeds the State Authority in title, cannot be entitled to possession until the equity of the defendants has been satisfied.

Counsel cited the case *Lee Suat Hong v. Teo Lye* [1988] 2 MLJ 537 CA in support of the proposition the defendants have acquired an equity by acquiescence which must be satisfied before the plaintiff can be entitled to possession. Counsel argued that although *Yap Chong Lan v. Govt of the State of Negeri Sembilan & Anor* [1984] 2 MLJ 123 FC had held that the doctrine of estoppel cannot be established against the State Authority, that decision was flawed because the court failed to consider or distinguish between a challenge to the legal title and a claim based on equitable or promissory estoppel for just compensation arising from the acquiescence or implied consent of the State Authority to the defendants' occupation of the said land. The defendant's claim is based on the second aspect.

In my view, *Lee Suat Hong v. Teo Lye* is of no assistance, being a case between two private parties. Of the decision of *Yap Chong Lan v. Govt of the State of Negeri Sembilan & Anor* it cannot be said of the Federal Court decision that it is flawed. The learned judge had in fact referred to the failure to argue the point (see p. 127 E-I right), and dealt with in some detail as to the application of equitable estoppel in public law (see p. 128 I-left ff).

The defendants' argument ignores the essential distinction between the term State Authority as defined under the National Land Code (the Code) and state authorities in the ordinary sense. State Authority under the Code is defined, for the purposes of Selangor, as the Ruler. For practical purposes this means the Ruler acting upon the recommendation of the Exco of the State. In *Yap Chong Lan v. Govt of the State of Negeri Sembilan & Anor* the Federal Court held:

> It is necessary in the first instance to consider the authority of the Collector to bind the State Authority in making the commitment alleged by the respondents. He had no authority in our view to purport to commit the State Authority even if he did give the assurances alleged (*Sidek bin Haji Muhamed & 461 Ors. v. The Government of the State of Perak & Ors* [1982] 1 MLJ 313, 314.)

Even the State Government, let alone any Minister, Exco member or politican, elected or not, as such, has nothing to do with these proceedings under the Code, which recognises only the State Authority. In this case, it is alleged that the district officer allowed certain fire victims to rebuild their houses. The

pleadings in so doing, failed to aver even to the Land Administrator or Collector who might have some connection, but only to the district officer who is unknown to the Code.

In other words, the defendants have not only come onto the said land without consent, but have also remained thereon without the consent, of the State Authority. The knowledge or acquiescence of other state authorities or personalities is wholly irrelevant to the Code.

Further along in that decision, the Federal Court in no uncertain terms said:

> There can be no intervention by equity in the face of the specific legislative provisions of the Code (*Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corporation Berhad* [1981] 2 MLJ 264.)

Thus even in a case where a temporary occupation license is issued, upon the end of the license, there can be no claim in equity for compensation for structures and improvements made upon such land. The occupier makes such expenditures upon his own accord and risk.

To conclude otherwise would, to borrow the language of Abdoolcader FJ in *Yap Chong Lan v. Govt of the State of Negeri Sembilan & Anor* "establish against the State Authority rights in respect of State land which it is prevented from creating other than in the prescribed manner". The application of equitable principles and the doctrine of estoppel is therefore misconceived.

There is also another reason. A person seeking remedy in equity must come with clean hands. It is clear the defendants have been in breach of the Code punishable under s. 425 thereof. The defendants cannot be said to have come with clean hands. That the State Authority had not acted against the defendants cannot mean the State Authority has given consent. Such argument cannot stand in the face of the clear provision that no title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever: s. 48. Adverse possession cannot become a bar to the recovery of possession by the proprietor or any person having an interest therein: s. 341.

The Code specified the procedure to obtain title or temporary occupation licence, and no evidence has been advanced that any of the defendants in this case had made either application. Mention is made by a witness that an application for a temporary occupation licence was made by a committee in 1991, but no evidence of the application, and in respect of whom, has been advanced.

Even if there is an application and that application was made on behalf of each and every one of the defendants in this case, the mere submission of an application can never amount to consent by the State Authority to occupation until in the approval and licence issued is issued since the Code makes no provision for any provisional occupation until approval or license is issued. In this regard, s. 78(3) gave the true principle under the Code: alienation takes effect only upon registration notwitstanding earlier approval. That the registration means everything in the Torrens System has been emphasised by the Federal Court in *Teh Bee v. Maruthamuthu* [1977] 2 MLJ 7, 12. Mere approval itself is therefore insufficient. By the same token in the case of temporary occupation licenses, the right to occupy arises only when the license is issued.

Counsel for the defendants have also sought to argue on the basis of promissory estoppel. I shall deal with it briefly. Regardless of whether promissory estoppel may be used as a shield or as a sword (*Walton Stores Ltd v. Maher & Anor* [1987-1988] 164 CLR 387 HCA, the first question is always whether there was a promise made upon which the defendants have acted (see *Lee Suat Hong v. Teo Lye*). There is no evidence of any promise by the State Authority or by the plaintiff. That being the case there is no purpose to consider the question further in this case. The failure to prosecute under s. 425, being non-action is not by itself a promise. Acquiescence based on the argument of non-action without more, similarly cannot be a promise. With regard to the argument the district officer allowed the fire victims to rebuild on the said land, *Yap Chong Lan v. Govt of the State of Negeri Sembilan & Anor* would provide a complete answer. The relevant authority is at all times the State Authority, and not even the act of the Collector, let alone a district officer whose existence is alien to the Code, can bind the State Authority.

I find therefore the defendants cannot acquire equitable rights against the State Authority in respect of their occupation of the said land.

With the conclusion that the defendants have not acquired any equitable interest against the State Authority, the title that the plaintiff obtained from the State Authority is, *prima facie*, equally free of any equitable interest of the defendants unless there are such conditions imposed by the State Authority. Again there is no evidence adduced by the defendants or conceded by the plaintiff of such conditions.

It was argued that the state authorities took the easy way out, and that the state authorities intended the plaintiff to assume the State Authority's obligations. I think the argument is wholly misconceived. It cannot stand where the State Authority itself has, in law, no obligation or liability to settle with the defendants. There is no evidence adduced in this case by the defendants of any condition imposed by the State Authority to settle any matter with the defendants. In not imposing any condition the State Authority was entirely legally correct as it had no legal obligation to the defendants who are squatters simpliciter.

The plaintiff upon receiving title had taken steps to develop the land and sought to remove the squatters from the said land. There is no evidence the plaintiff consented to or acquiesced to the defendants remaining upon the said land. Indeed the evidence point to the contrary.

Cases of this nature always carry a heavy emotional burden. It is not unnatural to develop an emotional attachment to an abode, no matter how humble, that one has lived in for some time. Secondly, the persons usually involved to be evicted are more often than not from the lower economic scale who had moved in onto State land without license or title. The court is not unknowing of these socio-economic issues. But in the issues of themselves do not create legal or equitable rights. No one can fail to appreciate one cannot obtain or acquire rights merely by moving in. It would encourage and reward the brazen to move in on every piece of empty State land, while those who follow the provisions of the Code will be disadvantaged. Such a position is wholly indefensible. The greater good of the society is better served by a orderly adherence to the provisions of the law, in this case, under the National Land Code. The plaintiffs having duly obtained clear registered title to the said land, it would also be unjust for the court to be generous to the defendants with the rights of the plaintiff. To do so would be lending the assistance of the court to those who by unlawful occupation of the land hold to ransom registered owners unless they are paid off.

All these lead to the inescapable conclusion that the defendants have not at any time acquired any equitable interest or right either against the land or the plaintiff, and the plaintiffs applications must in the circumstances of this case be allowed, the detailed terms of which is to be settled, if necessary by further application.